

BIOTECHNOLOGY INDUSTRY ORGANIZATION (BIO)
NATIONAL VENTURE CAPITAL ASSOCIATION (NVCA)
TECHNET
ELECTRONIC INDUSTRIES ALLIANCE (EIA)
SEMICONDUCTOR INDUSTRY ASSOCIATION (SIA)
TELECOMMUNICATIONS INDUSTRY ASSOCIATION (TIA)
CALIFORNIA HEALTHCARE INSTITUTE (CHI)
ADVANCED MEDICAL TECHNOLOGY ASSOCIATION (ADVAMED)
MEDICAL DEVICE MANUFACTURERS ASSOCIATION (MDMA)
ASSOCIATION OF BIOSCIENCE FINANCIAL OFFICERS INT. (ABFO)

April 3, 2006

Chairman Christopher Cox
Commissioner Cynthia A. Glassman
Commissioner Paul S. Atkins
Commissioner Roel C. Campos
Commissioner Annette L. Nazareth
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Mr. Chairman and Commissioners:

On behalf of the biotechnology, healthcare technology, high technology, electronics and information technology, semiconductors, and venture capital industries, we strongly urge the Securities and Exchange Commission (SEC) to expeditiously adopt the recommendations of the Advisory Committee on Smaller Public Companies (“Advisory Committee”) and provide Section 404 reforms under the Sarbanes-Oxley Act for microcap and smallcap companies. Our member companies include the investors and management of a majority of microcap and smallcap companies in the U.S. We believe the SEC’s support and adoption of the Advisory Committee’s recommendations will have a critical impact on America’s ability to maintain its global competitiveness in the high growth sectors of our nation’s economy.

The concerns over Section 404, and in particular its affect on smaller public companies, have been identified and acknowledged not only by small businesses and

other market participants, but also by members of the Commission.¹ As such, we fully support the Advisory Committee's prioritization of the Section 404 reform recommendations to the Commission given that the current application and implementation of Section 404 to smaller public companies is contrary to the Commission's guiding principle in the adoption of regulations – achieving the maximum benefit with the least amount of cost and intrusion into corporate decision-making.

We support the Advisory Committee's recommendation to provide section 404 reforms based on a "revenue filter" or condition. This approach astutely recognizes that product revenues drive the complexity of corporate structures and the corresponding need for controls to protect against financial fraud. Further, we believe this approach will begin to address the disproportionate cost burdens of section 404 requirements that continue to hamper smaller companies' ability to invest in research and development, to gain access to public capital markets, and to remain competitive.

As many of us stated in our letter to the Advisory Committee in December, 2005, basing proposed reforms, in part, on product revenues is critical to smaller companies in our industries. Biotech, high tech, and other innovative start-up companies generally have very low revenues comparable to their market capitalizations. For example, it is not uncommon for newly public biotech or high tech companies to have a market capitalization of \$700M, but have product revenues of \$1 million or less. As representatives of such organizations and their investors, we wholeheartedly support the Advisory Committee's recommendations, including the product revenue thresholds for the deferral of Section 404 unless and until a more suitable framework can be developed for smaller companies that recognizes their characteristics and needs.

As the Advisory Committee correctly pointed out in its recommendations, it is also the experience of smaller public companies that their limited revenues directly impact their corporate structures, resulting in leaner staffs and budgets. Given the disproportionately high cost of section 404 compliance for smaller companies, many are forced to redirect funding from other resources, including R&D, which are critical for continued innovation and survival of the company. For example, a small company with \$150M in market capitalization with no product revenues could pay upwards of \$1M for costs associated with Section 404 compliance. This amount often does not include a company's indirect costs of complying with Section 404, or the costs associated with non-accounting staff performing the internal control work due to the shortage of available resources.

In addressing the above concerns, the Advisory Committee correctly focused on providing reforms for those at the bottom 6% of total U.S. equity market capitalization. The Advisory Committee's scaled approach to section 404 reforms, which requires increasingly strict compliance with Section 404 as companies grow in market capitalization and revenues, reflects the needs and realities of corporations today. To

¹ Remarks before the Center for the Study of International Business Law Breakfast Roundtable Series by Cynthia A. Glassman (October 7, 2005); and Remarks before the Joint Meeting of SEC Government-Business Forum on Small Business Capital Formation Forum and the SEC Advisory Committee on Smaller Public Companies by Paul S. Atkins (September 19, 2005).

take advantage of the proposed reforms, even the smallest microcap company must comply with the audit committee requirements under Section 10A-3 of the Securities Exchange Act of 1934 and adopt a code of ethics applicable to its directors, officers and employees, governance requirements that may not otherwise be applicable to these companies.

In addition, the Section 404 reform recommendations will support management's incentive to maintain effective systems of internal controls and produce accurate financial reports. Section 13(b)(2)(B) of the Exchange Act requires, as it has since 1977, that public companies maintain a system of internal controls that provide reasonable assurances as to the accuracy of financial reports. Even with section 404 reforms, smaller public companies would still be required to provide the chief executive officer and chief financial officer certifications as required by Section 302 of Sarbanes-Oxley and the Commission's rules related thereto. Pursuant to these certifications, each CEO and CFO must certify that the financial statements fairly present in all material respects the financial condition of the company, and they have disclosed all weaknesses in the internal controls which could be reasonably likely to adversely affect the company's ability to record, process, summarize and report financial information, among other things. As a result, we believe these companies are already required, and are performing, the necessary measures in order to produce reliable financial statements – the purpose of Section 404.

As representatives of a majority of the smaller public companies and the venture capitalists that invest in them, we also believe that what truly drives investment in smaller companies is proof of concept at each stage of development, not Section 404 requirements. For instance, it is rather ironic that one of the private companies in the biotech industry recently spent on Section 404 readiness an amount equal to what it would normally spend on six to seven months of research and development – which could actually lead to proof of concept. In fact, what hinders the smaller company's growth most are regulatory impediments that restrict the management's ability to invest its limited resources in the science or the technology base of the company.

The current problems with Section 404 are not merely growing pains where the costs and burden will decrease once the auditors and companies become more familiar with the process and requirements. The current regime imposes the same requirements, steps and reviews on all companies, by the same individuals, for each and every year. As a result, the high costs are fixed, and ongoing, impacting the long-term investment resources of smaller public companies.

We believe the Advisory Committee's exposure draft and recommendations with respect to Section 404 reforms for microcap and smallcap companies, provided certain requirements are met, represent thoughtful and necessary recommendations at this time. We sincerely appreciate this opportunity to provide comments on the Advisory Committee's recommendations, and we urge you to support and expeditiously adopt the recommended reforms.

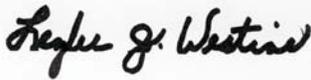
Sincerely,



James C. Greenwood
President and CEO
Biotechnology Industry Organization



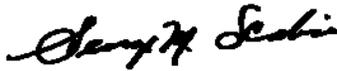
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